IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL SECOND APPEAL No. 372 of 2006

MUNICIPAL BOARD BANSWARA & ANR
V/S
SMT. KALAVATI

2. CIVIL SECOND APPEAL No. 476 of 2005

MUNICIPAL BOARD BANSWARA & ANR
V/S
CHANDRA KARAN

3. CIVIL SECOND APPEAL No. 261 of 2006

MUNICIPAL BOARD BANSWARA & ANR
V/S
PAWAN KUMAR

4. CIVIL SECOND APPEAL No. 266 of 2006

MUNICIAPL BOARD BANSWARA & ANR
V/S
BHUPENDRA & ANR

5. CIVIL SECOND APPEAL No. 302 of 2006

MUNICIPAL BOARD BANSWARA
V/S
ABDUL GAFFAR

Mr. PR MEHTA, for the appellant / petitioner.

Mr. MC BHOOT, Mr. MOHD. ASLAM for Mr. MANISH SHISHODIA & Mr. PRAKASH NAYAK, for the respondents.

Date of Order : 7.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

These five appeals arise in identical circumstances, and involve practically common questions of

law and facts, and therefore, are being decided by this common order. Since the arguments were advanced on the basis of the facts in, C.S.A. No. 476, therefore, for the purpose of convenience, I take the facts from C.S.A. No. 476/2005.

Facts of the case are, that the plaintiffs respondents filed suits, which were amended, and ultimately the facts pleaded were, that the plaintiffs were in possession of plot measuring 20 x 20 ft., and had erected cabin, wherein they were carrying on business. However, later on an advertisement came to be issued in Rajasthan Patrika, issued by the Municipality, for alienating that plot by way of 99 years lease, by public auction, and therefore, the plaintiffs approached the defendants, thereupon they were asked to vacate the premises. It was alleged, that the action is arbitrary, and the plot cannot be auctioned without evicting the plaintiffs in accordance with law. Then, it was pleaded that in the year 1994 there was a compromise between the parties, and accordingly order was passed by the learned District Judge on 24.8.98. Accordingly, the plaintiff prayed for being allotted one of the five plots, from out of plots no. 8, 11,12, 13 and 14, at Old Jail Road, and prayed for a direction to be given to the defendant, to give plot to the plaintiff. It was then pleaded that, according to the circular of the Government, the tenant is entitled to have the land at 50% of the

reserve price, and accordingly the plaintiff applied before Samjhota Samiti. Interalia with these pleadings it was prayed, that the plaintiffs may not be dispossessed, the advertisement be quashed, and the plaintiffs be given the plot in accordance with the compromise dt. 6.6.1994, read with Government circular dt. 18.11.2000.

The Municipal Board filed its written statement, contending interalia, that the plaintiff has no shop (cabin) on the site, nor is he carrying any business, and is not in possession, nor invested anything. It was denied that the rent was being paid regularly, rather no rent is paid, and plaintiff's tenancy has already been terminated, and it was denied that the plaintiff was threatened to be dispossessed, rather in view of the compromise between the parties, arrived at on 6.6.1994, the plaintiff removed the occupation, and in its place, proceedings are being taken to give land in other market, at market rate. Some other pleas were also taken, but in substance, on the basis of these pleadings, it was prayed, that the suit be dismissed.

Learned trial court, after completing the trial, decreed the suit on 27.8.2002, finding that the suit is being decided by consent of both the parties, therefore, the matter is not being decided issue-wise, as both the parties are agreed, to give the relief to the plaintiff, in accordance with the resolution of Samjhota Samiti dt.

9.3.2002. Accordingly, it was directed, that the plaintiff is entitled to 15 x 30 ft. land, situated at Old Jail Road, in accordance with the resolution of Samjhota Samiti dt. 9.3.2002, at 50% of the reserve price, according to the Government circular dt. 18.11.2000, and since the plaintiff is tenant since 1986, in accordance with the compromise dt. 6.6.94, and the order of the learned District Judge dt. 24.8.98, the plaintiff is entitled to have the land from out of the land in approved plan on old Jail Road, at concessional price. Then, the Sub Registrar was asked to inform the DLC rates, and in response thereto the rates were communicated to be Rs. 431/- per sq. ft., and therefore, it was directed, that the plaintiff is entitled to have the plot measuring 15 x 30 ft., on old Jail Road, at the rate of Rs. 431/- per sq. ft., according to the resolution of the Samjhota Samiti, read with compromise dt. 6.6.1994, and the government circular dt. 18.11.2000, at the same time the advertisement was quashed.

A look at the resolution of the Samjhota Samiti shows that according to the resolution, the plaintiffs Pawan Kumar and Smt. Neeru Ben, whose litigation was pending, requested for regularisation of plot, and it was decided to regularise the same on the prevalent market price, after ascertaining its cost from Sub Registrar, and the plaintiffs withdraws the suit, thereafter proceedings will be taken for regularisation.

It appears that all the plots were similarly situated, and with the consent of the learned counsel for the parties (defendant), identical relief was granted to all the five plaintiffs.

Aggrieved of this decree of the learned trial court, an appeal was filed by the appellant, raising various grounds, including that the matter was never compromised, and the Court was wrong in passing a decree on the basis of mutual consent. Then, it was contended that the amended plaint has been filed belatedly. Then it was pleaded, that the learned trial court was in error in relying upon the rates conveyed by the Sub Registrar, as the rates conveyed by the Sub Registrar are about Jail Road, Bus Stand to Chandrapal Gate, while the D.L.C. Rates from Chandrapal Gate to Gandhi Statue, Bus Stand Jail was Rs. 2000/- per sq. ft., and if the appellant were given opportunity, then the appellant would have explained the expenditure incurred in upkeep of the land, sanitation, and beautification. It was also contended, that according to resolution of Samjhota Samiti, the question for regularisation was to be considered only after the suit is withdrawn, and since the suit has not been withdrawn, the resolution automatically lapses, and after hearing the arguments on 9.8.2002, the Samjhota Samiti has given proposal for market rate, without hearing the appellant

about it. Then, it was contended that no issue was framed about Rs. 431/- per sq. ft. being the market rate, and since according to the prevalent D.L.C. Rates, the rate of the land in question is Rs. 2000/- per sq. ft., the appellant is entitled to that amount. Then, contentions were raised about identity of the location, to contend, that the price of the land is Rs. 2,000/- per sq. ft. Then, contention was raised about the alleged compromise being in violation of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974, and that, since even according to the plaintiff he is a trespasser, in view of the provisions of Section 10A of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, the suit is barred, and it was pleaded that the rates informed by the Sub Registrar do not relate to area in question, as other plots in the area have been sold at a price, varying from Rs. 6,52,000/- to 8,42,000/-. Interalia with these pleadings it was prayed, that the appeal be allowed, and the judgment of the learned trial court be set aside.

The learned lower Appellate Court considered the contentions as advanced, and noticed, that the main contention of the learned counsel for the defendant was, that there was no compromise, and no consent was given, still the judgment has been passed on the basis of consent, which is bad, while according to the plaintiff in all the five matters the consent was given. Thereupon the learned

lower Appellate Court quoted the portion of the judgment of the learned trial court, and during the course of hearing called the advocate, who was representing the defendant in the trial court, and asked the factual aspect, and learned counsel gave out, that he had given consent to give relief to the plaintiff in accordance with the resolution of the Samjhota Samiti dt. 9.3.2002. Then, resolution of Samjhota Samiti was considered, and compromise arrived at on 6.6.1994 was considered, being Ex. 2, to which all the plaintiffs were parties, wherein it was agreed, that the Municipality will give them other land for the shop on market price. With this it was found, that it is clear that the judgment of the learned trial court was passed with consent, and it cannot be said, that the judgment has been passed without consent. Then, the other contention of learned counsel was considered, as to whether the price of the land was Rs. 2000/- per sq. ft., or Rs. 431/-, and for that the aspects regarding location of the land was considered, and it was found, as a fact, that the lands are situated at the place as mentioned in the Sub Registrar's communication. Then, the commercial rates of Banswara city from 1.6.2004 was also seen, wherein the area in question finds place at item no. 67, where the price of commercial land was described to be Rs. 500/- per sq. ft. Then, the question was considered, as to whether the other plaintiff can take advantage of the resolution of Samjhota Samiti, and found, that regarding other plaintiffs also, there was

a compromise dt. 6.6.1994, between both the parties, and according to that, the defendant is bound to allot land to the plaintiffs, on the market rates, and therefore, they were also entitled to relief. In the result it was directed that plaintiffs Niruben and Pawan Kumar be given the plots in accordance with the resolution of Samjhota Samiti, after recovering any other amount which is due, while for other plaintiffs, it was directed, that in accordance with the judgment of the learned trial court dt. 27.8.2002, and the compromise dt. 6.6.1994, if they file application for regularisation, they shall also be given the land in the area in question, by charging the then prevalent market price.

Aggrieved of these two judgements, the present second appeals have been filed.

Long drawn arguments were raised, which substantially comprised of reading the two impugned judgements, and the resolution of the Samjhota Samiti, and the order of the State Government. Then it was contended, that no issue-wise finding has been given, and that location of the land in question has wrongly been considered by the learned lower Appellate Court. Then it was contended, that the findings recorded by the learned lower Appellate Court in para-11 and 12 of the judgment are out come of misreading of the record.

Learned counsel for the appellant was pointedly asked, as to what is the ground taken in appeal before this Court, about alleged misreading, comprised in two paragraphs, but the learned counsel could not give any satisfactory answer. Learned counsel was also asked to make available for perusal of the Court, the letter of Sub Registrar, indicating the price of the land to be Rs. 431/- per sq. ft. with respect to the land, but that also learned counsel failed to show. Then, again much stress was laid on the question, that in view of the provisions of O. 23 C.P.C., unless the matter is settled between the parties by compromise, in writing and duly signed, consent decree cannot be passed. Since in the present case there is no such compromise, the impugned decree is bad.

In my view it would suffice to observe, that in strict sense, the term compromise would be different thing, as compared to consent decree. It is in this view of the matter, probably that this argument was not advanced before the learned lower Appellate Court, and only argument was made on the factual aspect, contending, that no consent was given; and the learned lower Appellate Court went to the extent of even calling the learned counsel, to ascertain the factual aspect, who appeared before the learned trial court and affirmed recital to be correct, and that aspect has not been assailed before me. In that view of the

matter, I do not find any ground to interfere with the impugned decrees on that count.

Much was then sought to be argued on the basis of identity of the location of land, to contend, that the price of the land in question was Rs. 2000/- per sq. ft. Suffice it to say, that a look at Ex. 28 available on record, shows, that at item no. 50 the price of the land is shown to be Rs. 3000/- on the road, and Rs. 2000/- on the backside, but then significantly this is price per sq. yard, and not per sq. ft. The attention of the learned counsel was pointedly drawn to this document, and to that the learned counsel only submitted, that there is some confusion as to whether the price is per square yard or per square ft., but then, by scanning of the record I do not find, that any controversy in this regard has at all been raised at any time. In that view of the matter, the entire basis of argument is lost.

Then, the learned counsel laid much stress on the condition no. 3, of the circular dt. 18.11.2000, to claim 50% of the reserve price, in addition to market rate. A bare look at the condition no. 3 shows, that this relates to cases, where the land already under his possession is regularised, while in the present case in terms of the compromise dt. 6.6.1994, the land in possession has already been vacated, and that land is not sought to be

regularised, but they are being allotted other land at other place, and in this circular there is nothing to show, that the appellant is entitled to pay any further additional amount. Not only this if the appellant's right to get 50% of the reserved price is conceded under the circular dt. 18.11.2000, then it is significant to note that the circular does not provide for the liability to pay additionally the market price.

Learned counsel wanted to cite some judgements, on the aspect, of decree being not permissible to be passed in absence of written compromise signed by the parties. Obviously since this contention has not been raised in the learned lower Appellate Court, learned counsel was not allowed to detain the Court any longer, as the Court has already been held up for quite a long time, by making submissions without any basis.

Now I may deal with the application of the appellant filed under O. 41 Rule 27 C.P.C. A look at the application shows, that it has been contended therein, that the market rate of the shops was wrongly applied by the learned courts below, and that evidence regarding applicability of appropriate rate for commercial plots, at road site, at the place, where the shops are allotted i.e. at the road from Gandhi Murti to Custom Chouraha through the Jail Road old Bus Stand, is much higher than the rates

applied by the learned courts below, by taking into account the situation of the shops on the Jail Road, situated at the road known as from Bus Stand to Chandra Pole Gate, through Mochiwada (Jail Road), and that the evidence was brought before the courts below was refused to be admitted, which ought to have been admitted. Therefore, the petitioner seeks to produce the letter of the Sub Registrar, showing the list of prevailing rates as on 26.4.2002, as well as on 16.11.2005, and in this regard the schedule of rates of the aforesaid dates, along with the letter of the concerned authority, and statement of auction rates of plot no. 1 to 6, have been produced as Ex. P-1, P-2 and P-3.

In the first place there is nothing to show, that these documents were sought to be produced in the learned courts below, and were not received. Then, in Ex.P-1 the petitioner relies upon entry no. 32, while the learned court below has relied upon entry no.41. Likewise so far as Ex.P-2 is concerned, therein the rates are at item no. 67, while according to the appellant the rates are in item no. 79.

In my view so far as Ex.P-1 and P-2 are concerned, suffice it to say, that in Ex. P-1 the rate prescribed for item no. 41 is Rs. 431/- per sq. ft., and even according to the petitioner, this is the rate prevailing on 26.4.2002,

which is the rate around the time after the resolution of the Samjhota Samiti. The question then is, as to whether the rates were required to be considered as per item no. 41, or item no. 32, in this regard it may be observed that the matter was canvassed before the learned lower Appellate Court, and the learned lower Appellate Court has found as a fact, that the land is covered by the description, which in my view is covered by item no. 41. So far as document Ex.P-2 is concerned, that obviously being of the year 2005, which is not the relevant date, is also not required to be taken on record. Then, so far as Ex.P-3 is concerned, in my view, that is of no relevance, as obviously the reserve price or the D.L.C. Rates and auction price in public auction, are very distant neighbours. In that view of the matter, the documents sought to be produced cannot be said to be necessary to be taken on record now. Therefore, the application under O. 41 Rule 27 is dismissed.

Thus, in my view, the appeals do not involve any substantial question of law, therefore, they are required to be, and are dismissed summarily.

Before parting with the case, it may be observed, that the present litigation is a sad commentary on the honesty, and fairness of the present respondent, inasmuch as, the tenants have been uprooted by compromise, entered into way back in 1994, and for the last more than 13 years,

they are deprived to earn livelihood, which they were earning from the land, from where they were uprooted. I feel like resting only by expressing the anguish, and expecting, that good sense will prevail over the appellant, and at least now it would behave well, and give the relief expeditiously, without forcing the respondent, to further long drawn battle royal, of execution, by allowing the saying to prove, that the misfortunes of the plaintiff's start only when he gets the decree from the Court.

(N P GUPTA),J.